

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

ESTATES OF WILLIAM I. GRIFFITH and
RONALD MAYNOR,
and MORELAND & MORELAND,
2518 Kanawha Boulevard, Charleston, WV,
and UNITED MINE WORKERS OF AMERICA,
INTERNATIONAL UNION,
18354 Quantico Gateway Drive, Triangle VA,

Plaintiffs,

v.

Civil Action No. 2:10-0716

JOSEPH MAIN, Assistant Secretary
MINE SAFETY AND HEALTH ADMINISTRATION,
U.S. Department of Labor,

Defendant.

UNITED STATES MOTION TO DISMISS COMPLAINT

Now comes the United States of America ("United States"), on behalf of Joseph Main, Assistant Secretary Mine Safety and Health Administration, and, pursuant to Fed. R. Civ. P. 12(b)(1) and (6), respectfully moves to dismiss this action for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. As grounds for this motion, the United States represents that the actions about which Plaintiffs complain are committed to the absolute discretion of an independent agency of the Executive Branch of the United States government. Accordingly, this action is barred by sovereign immunity, and the Court is deprived of subject matter jurisdiction. Further, an action against an agency or officer of the United States is an

action against the United States. Accordingly, the United States is the real party in interest. Federal agencies and their instrumentalities cannot be sued eo nomine absent explicit authorization by Congress. Thus, Plaintiffs have failed to state a claim upon which relief may be granted.

The United States incorporates its memorandum in support, and its response in opposition to Plaintiffs' motion for temporary injunction and preliminary injunction, filed contemporaneously herewith.

WHEREFORE, the United States respectfully requests that Plaintiffs' complaint be dismissed.

Respectfully submitted,

CHARLES T. MILLER
United States Attorney

s/Carol A. Casto

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CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2010, I electronically filed the foregoing *United States Motion to Dismiss Complaint* and *Memorandum In Support* with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Rachel Moreland, Esquire
Bradley J. Pyles, Esquire
Charles F. Donnelly, Esquire

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Grant Crandall, Esq.
Judith Rivlin, Esq.
United Mine Workers of America
18354 Quantico Gateway Drive
Triangle, VA 22172-1779

s/Carol A. Casto

Assistant United States Attorney